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Attorney for Debtors

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IN THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF UTAH

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In re: <b>BRYAN D. POUND</b>	:	Bankruptcy No. 16-28986
<b>KATIE S. POUND</b>	:	Chapter 13
	:	Judge Kevin R. Anderson
	:	
Debtors.	:	Filed Electronically

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**MOTION FOR U.S. BANK NATIONAL ASSOCIATION TO PAY DEBTOR'S  
ATTORNEY'S FEES PURSUANT TO RULE 3002.1**

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Bryan D. Pound and Katie Scarlet Snell (the "Debtors"), by and through Counsel, hereby move the Court to enter an order that U.S. Bank National Association (the "Creditor") pay the attorney's fees incurred by the Debtors' Counsel pursuant to Fed.R.Civ.P. 3002.1(i).

**UNDERLYING FACTS**

1. On October 11, 2016, the Debtors filed their Chapter 13 bankruptcy. The Debtors' plan provided for the payment of a pre-petition mortgage arrearage to Specialized Loan Servicing ("SLS") in order to cure the loan and become current.<sup>1</sup>

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<sup>1</sup> Debtors note that the original claim was filed by U.S. Bank National Association Trustee and subsequently transferred to U.S. Bank Trust National Association which apparently was serviced by BSI Financial Services.

2. The Debtors' prepetition mortgage default was determined by the allowance of U.S. Bank National Association Trustee's Proof of Claim No. 8 and the Mortgage Proof of Claim Attachment, in the amount of \$14,623.70.

3. The Debtors' Chapter 13 Plan provided for payment of that amount and maintenance of current payments by the Debtors. It was confirmed by order of this Court and is binding on the Creditor under 11 U.S.C. § 1327.

4. On or around November 22, 2017, SLS delivered a letter to the Chapter 13 Trustee stating that its prepetition arrears were paid in full and no longer asserted a claim against the bankruptcy estate; and on March 20, 2018, an order was entered that reduced SLS's prepetition claim to \$0.00.

5. After the Debtors completed their Plan payments, on November 14, 2019, the Trustee filed a Notice of Final Mortgage Cure Payment in this case pursuant to Fed R. Bankr. P. 3002.1(f). The amount established as the arrearage to be cured by the Debtors on their mortgage was paid in full, as confirmed by the Notice of Final Mortgage Cure Payment filed by the Trustee.

6. The Notice of Final Mortgage Cure Payment filed by the Trustee informed the Creditor of its obligation to respond and to file a statement indicating whether it agrees that: a) the Debtors have paid in full the amount required to cure the default on the claim, and b) the Debtors are otherwise current on all payments consistent with 11 U.S.C. § 1322(b)(5).

7. On December 5, 2019, the Creditor filed its Response to Notice of Final Cure Payment agreeing that the Debtors have paid in full the amount required to cure the prepetition default on the creditor's claim. In addition, the Mortgagee's response indicated that the Debtors are in default

with their postpetition mortgage payments. The Creditor's response indicates six (6) post-petition payments owed for a total delinquency of \$8,155.92. (See **Exhibit A** attached.)

8. In response, on December 26, 2019, the Debtors filed their Motion to Determine Final Cure Payment pursuant to Rule 3002.1. [Doc. # 41].

9. On January 13, 2020, the Creditor filed a response indicating that it had requested copies of cancelled checks to allow it to "both trace and conduct further research into each of the transactions at issue." The response asked that the Debtors' Motion be denied. [Doc #43] (See **Exhibit B** attached.)

10. On January 24, 2020, the Creditor filed an amended Response to Notice of Final Cure Payment which indicated that there were no defaulted post-petition arrears. (See **Exhibit C** attached.)

11. The parties appeared at the hearing in this matter on January 27, 2020. At the hearing, and despite the amended Response, Counsel for the Creditor indicated that there may still be one missing payment. Further, Counsel had questions regarding the accounting. Counsel then asked that the matter be continued to sort out the facts. The matters were continued to February 10, 2020.

12. At the February 10, 2020 hearing the Creditor's counsel indicated all post-petition payments were current. The Debtors' counsel asked for an award of fees pursuant to Fed.R.Bankr.P. 3002.1(i). The Court required the Debtors to file a separate motion setting forth the legal basis for the fees. This motion follows.

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### **APPLICABLE RULES**

13. Rule 3002.1 applies in this matter as the claim is secured by an interest in the Debtors' principal residence and the plan provided for payment of ongoing mortgage payments by the Debtors. Fed.R.Bankr.P. 3002.1(a).

14. Sections 3002.1(f), (g) and (h) provide the mechanism to determine whether the Debtors are current on mortgage payments at the end of the case.

15. Section 3002.1(f) requires the Trustee to file a Notice of Final Cure Payment.

16. Section 3002.1(g) requires a mortgage creditor, within 21 days of the Trustee's Notice to file a statement indicating:

(1) whether it agrees that the debtor has paid in full the amount required to cure the default on the claim, and

(2) whether the debtor is otherwise current on all payments consistent with § 1322(b)(5) of the Code.

17. Section 3002.1(h) allows the Debtors to move for a determination whether the Debtors have cured the default and paid all post-petition amounts.

18. Section 3002.1(i) states in pertinent part that if a holder of a claim fails to provide any information as required in subdivision (g) the court may, after notice and hearing, take either or both of the following actions:

(1) preclude the holder from presenting the omitted information, in any form, as evidence in any contested matter or adversary proceeding in the case, unless the court determines that the failure was substantially justified or is harmless; or

(2) award other appropriate relief, including reasonable expenses and attorney's fees caused by the failure.

### ISSUE

19. Whether a mortgage company which submitted to the Court inaccurate information concerning Debtors' post-petition mortgage payments, in its Rule 3002.1(g) response, is liable to the Debtors for attorney's fees and costs incurred to rebut the inaccurate information?

### ARGUMENT

20. Most courts hold that when a creditor files incorrect or false information pursuant to an obligation under Rule 3002.1, it is the equivalent of filing no statement at all.

Courts have determined that the filing of an incorrect and inaccurate supplement under Rule 3002.1(g) statement is the equivalent of filing no statement at all, asserting that "when confronted with an incorrect statement, a debtor is left with little alternative but to respond with a Rule 3002.1(h) motion, to attend a hearing on the motion, and incur attorney's fees and expense." *In Re Ferrell*, 580 B.R. 181, 185 (Bankr. D. S.C. 2017).

*In re Lopez*, No. 17-03902 (ESL), 2019 Bankr. LEXIS 498, at \*12 (Bankr. D.P.R. Feb. 20, 2019).

Rule 3002.1(b) required Nationstar to provide "notice of any change in the payment amount, including any change that results from an interest rate or escrow account adjustment. . . ." The rule requires creditors to provide information without expressly saying that the information must be correct. But I conclude that the provision of inaccurate information is equivalent to a failure to provide information. The purpose of Rule 3002.1, as discussed below, is served only if the creditor provides correct information."); *In re Ferrell*, 580 B.R. 181, 187 (Bankr. D.S.C.) (incorrect statement may be "worse than no statement"); *but see In re Trevino*, 535 B.R. 110, 131 (Bankr. S.D. Tex. 2015) (concluding that inaccurate notice does not violate Rule 3002.1 and analyzing issue instead under an abuse-of-process framework).

*In re Tollstrup*, No. 15-33924-dwh13, at \*4 (Bankr. D. Or. Mar. 16, 2018).

Other courts, while not addressing this legal question head on, have implicitly ruled that sanctions provided by Rule 3002.1(I) are available for a motion under Rule 3002.1(h) when the question is whether the creditor has complied with subdivision (g). See *In re Ferrell*, 580 B.R. 181, 186-88 (Bankr. D. S.C. 2017) (indicating that a motion under Rule 3002.1(h) is the proper procedure for debtors who wish to challenge the creditor's Rule 3002.1(g) statement); *In re Farhat*, Case No. 12-30103 (Bankr. N.D. Cal. Aug. 17, 2017); *In re Longmire*, Case No. 09-14629 (Bankr. W.D. Tenn. Sept. 11, 2015); *In re Kreidler*, 2013 WL 1334910, at \*2-3 (Bankr. M.D. Pa. Mar. 29, 2013). This makes sense since subdivision (h) specifically references subdivision (g), and subdivision (I) specifically references subdivision (g).

The Code is silent as to procedure, but clearly sanctions are available for a creditor's failure to comply with Rule 3002.1(g). Perhaps a debtor could file an opposition to the creditor's Rule 3002.1(g) response as opposed to filing a motion under Rule 3002.1(h). However, this would be putting form over substance. Whether one calls it an opposition to the creditor's response under Rule 3002.1(g) or a motion to determine the final cure amount under Rule 3002.1(h), the debtors here were seeking relief for what they contended was the creditor's failure to comply with subdivision (g). In that event, the remedies under subdivision (I) including the award of attorney's fees were available, and the bankruptcy court did not err in concluding so.

*Alvarez v. Bayview Loan Servicing, LLC (In re Alvarez)*, BAP No. NC-18-1104-BKuF, at \*13-14 (B.A.P. 9th Cir. Dec. 21, 2018).

21. The essential facts in this case are not disputed. The following graph indicates the incorrect statements made by the Creditor and the ramifications flowing therefrom.

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<b>Creditor's Statement</b>	<b>Evidence Statement is Incorrect</b>	<b>Ramifications of Statement</b>	<b>Debtors' Attorney's Time and Fees**</b>
Response under Rule 3002.1(g) which contained incorrect information asserting post-petition mortgage arrears.  (See <b>Exhibit A</b> )	1) Amended Response filed by Creditor (See <b>Exhibit C</b> )  2) Creditor's counsel at hearing on January 27, 2020 indicated that there was only one payment at issue. Further, despite his paralegal's filing of the Amended Response counsel indicated he still had questions about the accounting.	1) Debtors had to produce records demonstrating that payments were timely made.  2) Debtors' counsel filed the Motion to Determine Final Cure	3.8 hours  12/14/2019 through 12/26/2019  <b>Total: \$811.00</b>
Response to Debtor's Motion to Determine Final Cure requesting the Court deny the Debtor's Motion that they were current on their post-petition mortgage payments.	Response indicates "A thorough review of the bank statements provided ... identified six (6) payments reflected on their bank statements which had not been credited to Debtors mortgage payments..." (See Exhibit B, Line 4).	1) Debtors had to produce cancelled checks to the Creditor.  2) Debtors' counsel had to travel to and attend the hearing on January 27, 2020.	1.9 hours  1/10/2020 through 1/27/2020  <b>Total; \$310.00</b>
Amended Response that there were no post-petition arrears	Creditor's counsel's statements at the January 27, 202 hearing. See above.	The hearing was reset to 2/10/20. Debtors counsel had to travel to and attend this hearing.	1.6 hours  1/31/2020 through 2/19/2020  <b>Total: \$342.00</b>

**\*\*Debtors' Counsel's full accounting and time records attached as Exhibit D**

22. There is no doubt that but for the Creditor's factually incorrect Response pursuant to Rule 3002.1(g), the Debtors would not have suffered the time and anxiety gathering proof of their

mortgage payments and the ongoing anxiety of whether the bankruptcy would give them a “fresh start.” But for Creditor’s Response, Debtors’ counsel wouldn’t have spent time preparing a motion pursuant to Rule 3002.1(h), gathering additional information from the Debtors, and preparing and attending two hearings on this matter.

23. This is a question of equity. Creditors are routinely granted attorney’s fees when filing a motion for relief from stay for missing mortgage payments. Part of the cure or resolution of those motions often include payment of creditor’s attorney’s fees. Likewise, when a debtor responds to a factually inaccurate Response from a creditor, the creditor should pay debtor’s attorney’s fees.

24. The time incurred by the Debtors’ counsel in responding to the Creditor’s factually inaccurate Response totaled 7.3 hours amounting to a total billable of \$1,463.00 (see **Exhibit D** attached).

WHEREFORE, the Debtors respectfully request the Court enter an order requiring the Creditor to pay \$1,463.00 to Debtors’ Counsel.

Dated this 4<sup>th</sup> day of March 2020.

/s/ Andrew T. Curtis  
Attorney for Debtors  
Lincoln Law



**Exhibit A**

Fill in this information to identify the case:

Debtor 1 Bryan D Pound

Debtor 2 Katie Scarlet Snell aka Katie Scarlet Pound  
(Spouse, if filing)

United States Bankruptcy Court for the: \_\_\_\_\_ District of Utah  
(State)

Case number 16-28986 KRA

## Form 4100R

# Response to Notice of Final Cure Payment

10/15

According to Bankruptcy Rule 3002.1(g), the creditor responds to the trustee's notice of final cure payment.

### Part 1: Mortgage Information

Name of creditor: U.S. Bank Trust National Association, as Trustee of the Igloo Series III Trust

Court claim no. (if known): 8

Last 4 digits of any number you use to identify the debtor's account: 4 8 6 5

Property address: 2227 East Lennox Lane  
Number Street

Saratoga Springs UT 84045  
City State ZIP Code

### Part 2: Prepetition Default Payments

Check one:

- ☒ Creditor agrees that the debtor(s) have paid in full the amount required to cure the prepetition default on the creditor's claim.
- ☐ Creditor disagrees that the debtor(s) have paid in full the amount required to cure the prepetition default on the creditor's claim. Creditor asserts that the total prepetition amount remaining unpaid as of \_\_\_\_\_ is: \$ \_\_\_\_\_

### Part 3: Postpetition Mortgage Payment

Check one:

- ☐ Creditor states that the debtor(s) are current with all postpetition payments consistent with § 1322(b)(5) of the Bankruptcy Code, including all fees, charges, expenses, escrow, and costs.

As of \_\_\_\_\_ the next postpetition payment from the debtor(s) is due on: MM / DD / YYYY in the amount of \$ \_\_\_\_\_

- ☒ Creditor states that the debtor(s) are not current on all postpetition payments consistent with § 1322(b)(5) of the Bankruptcy Code, including all fees, charges, expenses, escrow, and costs.

Creditor asserts that the total amount remaining unpaid as of 12/04/2019 is:

- a. Total postpetition ongoing payments due: (a) \$ 8,115.92
- b. Total fees, charges, expenses, escrow, and costs outstanding: + (b) \$ \_\_\_\_\_
- c. **Total.** Add lines a and b. (c) \$ 8,115.92

Creditor asserts that the debtor(s) are contractually obligated for the postpetition payment(s) that first became due on:

07/01/2019  
MM / DD / YYYY

Debtor 1 Bryan D Pound Case number (if known) 16-28986 KRA  
First Name Middle Name Last Name

**Part 4:** Itemized Payment History

If the creditor disagrees in Part 2 that the prepetition arrearage has been paid in full or states in Part 3 that the debtor(s) are not current with all postpetition payments, including all fees, charges, expenses, escrow, and costs, the creditor must attach an itemized payment history disclosing the following amounts from the date of the bankruptcy filing through the date of this response:

- all payments received;
- all fees, costs, escrow, and expenses assessed to the mortgage; and
- all amounts the creditor contends remain unpaid.

**Part 5:** Sign Here

**The person completing this response must sign it. The response must be filed as a supplement to the creditor's proof of claim.**

Check the appropriate box::

- ☐ I am the creditor.
- ☒ I am the creditor's authorized agent.

**I declare under penalty of perjury that the information provided in this response is true and correct to the best of my knowledge, information, and reasonable belief.**

Sign and print your name and your title, if any, and state your address and telephone number if different from the notice address listed on the proof of claim to which this response applies.

**X** /s/ Armand J. Howell  
Signature

Date 12/05/2019

Print Armand J. Howell Title Attorney at Law  
First Name Middle Name Last Name

Company Halliday, Watkins & Mann, P.C.

**If different from the notice address listed on the proof of claim to which this response applies:**

Address 376 East 400 South, Suite 300  
Number Street

Salt Lake City, UT 84111  
City State ZIP Code

Contact phone ( 801 ) 355 - 2886

Email: info@hwmlawfirm.com

**MAILING CERTIFICATE**

The undersigned hereby certifies that a true and correct copy of this Response to Final Cure Payment was mailed by first class mail, postage prepaid, or via ECF, this 5th day of December, 2019, to each of the following:

Bryan D Pound and Katie Scarlet  
Snell  
2227 East Lennox Lane  
Saratoga Springs, UT 84043  
Debtors

United States Trustee  
Via ECF

Andrew T Curtis  
Via ECF  
Debtors' Attorney

Lon Jenkins  
Via ECF  
Chapter 13 Trustee

/s/ Armand J. Howell  
Armand J. Howell



Payment Changes				
Date	P&I	Escrow	Total	Notice Filed
12/19/2016	\$1,080.20	\$214.89	\$1,295.05	Filed w/ POC
1/1/2018	\$1,080.20	\$279.76	\$1,359.96	NOPC
12/1/2019	\$1,080.20	\$235.92	\$1,316.12	NOPC

Loan Information	
Loan #	
Borrower	POUND
BK Case #	16-28986
Date Filed	10/11/2016
First Post Petition Due Date	
POC Covers	11/1/2016

Date	Amount Rcvd	Late Charges Incurred	Post Pet Due Date	Contractual Due Date	Amt Due	Over/Short	Suspense Credit	Suspense Debit	Suspense Balance	APO Credit	APO Debit	APO Suspense Balance	APO Paid to Date	POC Arrears Credit	POC Debit	POC Suspense Balance	POC Paid to Date	Comments
11/3/2016	\$1,295.09		11/1/2016		\$1,295.09	\$0.00			\$0.00			\$0.00	\$0.00			\$0.00	\$0.00	
12/6/2016	\$1,295.09		12/1/2016		\$1,295.09	\$0.00			\$0.00			\$0.00	\$0.00			\$0.00	\$0.00	
12/29/2016	\$1,295.09		1/1/2017		\$1,295.09	\$0.00			\$0.00			\$0.00	\$0.00			\$0.00	\$0.00	
1/30/2017	\$1,295.09		2/1/2017		\$1,295.09	\$0.00			\$0.00			\$0.00	\$0.00			\$0.00	\$0.00	
2/27/2017	\$1,296.09		3/1/2017		\$1,295.09	\$1.00			\$0.00			\$0.00	\$0.00			\$0.00	\$0.00	
3/28/2017	\$1,295.09		4/1/2017		\$1,295.09	\$0.00			\$0.00			\$0.00	\$0.00			\$0.00	\$0.00	
4/25/2017	\$1,295.09		5/1/2017		\$1,295.09	\$0.00			\$0.00			\$0.00	\$0.00			\$0.00	\$0.00	
5/24/2017	\$1,295.09		6/1/2017		\$1,295.09	\$0.00			\$0.00			\$0.00	\$0.00			\$0.00	\$0.00	
6/27/2017	\$1,295.09		7/1/2017		\$1,295.09	\$0.00			\$0.00			\$0.00	\$0.00			\$0.00	\$0.00	
7/25/2017	\$1,295.09		8/1/2017		\$1,295.09	\$0.00			\$0.00			\$0.00	\$0.00			\$0.00	\$0.00	
9/21/2017	\$1,295.09		9/1/2017		\$1,295.09	\$0.00			\$0.00			\$0.00	\$0.00			\$0.00	\$0.00	
10/17/2017	\$1,295.09		10/1/2017		\$1,295.09	\$0.00			\$0.00			\$0.00	\$0.00			\$0.00	\$0.00	
10/31/2017	\$1,295.09		11/1/2017		\$1,295.09	\$0.00			\$0.00			\$0.00	\$0.00			\$0.00	\$0.00	
12/9/2017	\$1,295.09		12/1/2017		\$1,295.09	\$0.00			\$0.00			\$0.00	\$0.00			\$0.00	\$0.00	
1/1/2018	\$1,359.96		1/1/2018		\$1,359.96	\$0.00			\$0.00			\$0.00	\$0.00			\$0.00	\$0.00	
3/2/2018	\$1,359.96		2/1/2018		\$1,359.96	\$0.00			\$0.00			\$0.00	\$0.00			\$0.00	\$0.00	
4/3/2018	\$1,359.96		3/1/2018		\$1,359.96	\$0.00			\$0.00			\$0.00	\$0.00			\$0.00	\$0.00	
5/1/2018	\$1,359.96		4/1/2018		\$1,359.96	\$0.00			\$0.00			\$0.00	\$0.00			\$0.00	\$0.00	
5/30/2018	\$1,359.96		5/1/2018		\$1,359.96	\$0.00			\$0.00			\$0.00	\$0.00			\$0.00	\$0.00	
7/31/2018	\$1,359.96		6/1/2018		\$1,359.96	\$0.00			\$0.00			\$0.00	\$0.00			\$0.00	\$0.00	
9/4/2018	\$1,359.96		7/1/2018		\$1,359.96	\$0.00			\$0.00			\$0.00	\$0.00			\$0.00	\$0.00	
11/2/2018	\$1,359.96		8/1/2018		\$1,359.96	\$0.00			\$0.00			\$0.00	\$0.00			\$0.00	\$0.00	
12/4/2018	\$1,359.96		9/1/2018		\$1,359.96	\$0.00			\$0.00			\$0.00	\$0.00			\$0.00	\$0.00	
2/7/2019	\$1,359.96		10/1/2018		\$1,359.96	\$0.00			\$0.00			\$0.00	\$0.00			\$0.00	\$0.00	
3/4/2019	\$1,359.96		11/1/2018		\$1,359.96	\$0.00			\$0.00			\$0.00	\$0.00			\$0.00	\$0.00	
4/30/2019	\$1,359.96		12/1/2018		\$1,359.96	\$0.00			\$0.00			\$0.00	\$0.00			\$0.00	\$0.00	
6/4/2019	\$1,359.96		1/1/2019		\$1,359.96	\$0.00			\$0.00			\$0.00	\$0.00			\$0.00	\$0.00	
7/2/2019	\$1,359.96		2/1/2019		\$1,359.96	\$0.00			\$0.00			\$0.00	\$0.00			\$0.00	\$0.00	
9/10/2019	\$1,359.96		3/1/2019		\$1,359.96	\$0.00			\$0.00			\$0.00	\$0.00			\$0.00	\$0.00	
10/1/2019	\$1,359.96		4/1/2019		\$1,359.96	\$0.00			\$0.00			\$0.00	\$0.00			\$0.00	\$0.00	
10/29/2019	\$1,359.96		5/1/2019		\$1,359.96	\$0.00			\$0.00			\$0.00	\$0.00			\$0.00	\$0.00	
12/2/2019	\$1,359.96		6/1/2019		\$1,359.96	\$0.00			\$0.00			\$0.00	\$0.00			\$0.00	\$0.00	
					\$0.00				\$0.00			\$0.00	\$0.00			\$0.00	\$0.00	
					\$0.00				\$0.00			\$0.00	\$0.00			\$0.00	\$0.00	
					\$0.00				\$0.00			\$0.00	\$0.00			\$0.00	\$0.00	
PAST DUE PAYMENT			7/1/2019		\$1,359.96	-\$1,359.96			\$0.00			\$0.00	\$0.00			\$0.00	\$0.00	
			8/1/2019		\$1,359.96	-\$1,359.96			\$0.00			\$0.00	\$0.00			\$0.00	\$0.00	
			9/1/2019		\$1,359.96	-\$1,359.96			\$0.00			\$0.00	\$0.00			\$0.00	\$0.00	
			10/1/2019		\$1,359.96	-\$1,359.96			\$0.00			\$0.00	\$0.00			\$0.00	\$0.00	
			11/1/2019		\$1,359.96	-\$1,359.96			\$0.00			\$0.00	\$0.00			\$0.00	\$0.00	
			12/1/2019		\$1,316.12	-\$1,316.12			\$0.00			\$0.00	\$0.00			\$0.00	\$0.00	
					\$0.00				\$0.00			\$0.00	\$0.00			\$0.00	\$0.00	
					\$8,115.92	-\$8,115.92			\$0.00			\$0.00	\$0.00			\$0.00	\$0.00	
					\$0.00				\$0.00			\$0.00	\$0.00			\$0.00	\$0.00	

**Exhibit B**

Armand J. Howell, Bar Number 10029  
Benjamin J. Mann, Bar Number 12588  
HALLIDAY, WATKINS & MANN, P.C.  
Attorneys for U.S. Bank N.A.  
376 East 400 South, Suite 300  
Salt Lake City, UT 84111  
Telephone: 801-355-2886  
Fax: 801-328-9714  
Email: armand@hwmlawfirm.com  
File No: UT10229

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF UTAH**

In re:

BRYAN D. POUND  
KATIE SCARLET POUND,

Debtors.

Bankruptcy Case No. 16-28986 KRA

Chapter 13

**OBJECTION TO DEBTORS' MOTION  
FOR DETERMINATION OF FINAL CURE  
AND PAYMENT OF ALL POSTPETITION  
PAYMENTS**

[Filed Electronically]

U.S. Bank Trust National Association, as Trustee of the Igloo Series III Trust ("Secured Creditor") hereby objects to Debtors' Motion for Determination of Final Cure and Payment of All Post-petition Payments. In further support of this objection, U.S. Bank, N.A. ("Creditor") respectfully states:

**BACKGROUND FACTS**

1. A petition under Chapter 13 of the United States Bankruptcy Code was filed with respect to the Debtor on October 11, 2016.
2. Following completion of their Plan payments the Chapter 13 Trustee filed a Notice of Final Mortgage Cure Payment on November 14, 2019.

3. Through counsel, Secured Creditor filed its Response to Notice of Final Cure Payment and while agreeing that Debtors had paid the amount to cure the pre-petition arrears indicated that Debtors remained delinquent for a total of six (6) post-petition payments.

4. A thorough review of the bank statements provided in the motion by Debtors identified six (6) payments reflected on their bank statements which had not been credited to Debtors mortgage payments. Each of the payments in question were processed through Wells Fargo's "bill pay" system.

5. The specific dates for each of the non-credited payment transactions have been provided to counsel for the Debtors to provide cancelled checks for each transaction to allow Secured Creditor to both trace and conduct further research into each of the transactions at issue.

**WHEREFORE**, Secured Creditor respectfully requests the following:

1. That Debtors Motion for Determination of Final Cure and Payment of All Post-Petition Payments be denied.
2. For such other relief that the court deems proper.

DATED this 13th day of January, 2020.

/s/ Armand J. Howell

Armand J. Howell

Attorney for Movant



**MAILING CERTIFICATE**

The undersigned hereby certifies that a true and correct copy of this Objection to Motion for Determination of Final Cure and Payment of All Post-Petition Payments was mailed by first class mail, postage prepaid, or via ECF, this 13th day of January, 2020, to each of the following:

Bryan D Pound and Katie Scarlet  
Snell  
2227 East Lennox Lane  
Saratoga Springs, UT 84043  
Debtors

United States Trustee  
Via ECF

Andrew T Curtis  
Via ECF  
Debtors' Attorney

Lon Jenkins  
Via ECF  
Chapter 13 Trustee

/s/ Armand J. Howell  
Armand J. Howell

**Exhibit C**

Fill in this information to identify the case:

Debtor 1 Bryan D Pound

Debtor 2 Katie Scarlet Snell aka Katie Scarlet Pound  
(Spouse, if filing)

United States Bankruptcy Court for the: \_\_\_\_\_ District of Utah  
(State)

Case number 16-28986 KRA

## Form 4100R

# Response to Notice of Final Cure Payment AMENDED

10/15

According to Bankruptcy Rule 3002.1(g), the creditor responds to the trustee's notice of final cure payment.

### Part 1: Mortgage Information

Name of creditor: U.S. Bank Trust National Association, as Trustee of the Igloo Series III Trust

Court claim no. (if known): 8

Last 4 digits of any number you use to identify the debtor's account: 4 8 6 5

Property address: 2227 East Lennox Lane  
Number Street

Saratoga Springs UT 84045  
City State ZIP Code

### Part 2: Prepetition Default Payments

Check one:

- ☒ Creditor agrees that the debtor(s) have paid in full the amount required to cure the prepetition default on the creditor's claim.
- ☐ Creditor disagrees that the debtor(s) have paid in full the amount required to cure the prepetition default on the creditor's claim. Creditor asserts that the total prepetition amount remaining unpaid as of \_\_\_\_\_ is: \$ \_\_\_\_\_

### Part 3: Postpetition Mortgage Payment

Check one:

- ☒ Creditor states that the debtor(s) are current with all postpetition payments consistent with § 1322(b)(5) of the Bankruptcy Code, including all fees, charges, expenses, escrow, and costs.

As of 01/24/2020 the next postpetition payment from the debtor(s) is due on: 01/01/2020  
MM / DD / YYYY in the amount of \$ 1,316.12

- ☐ Creditor states that the debtor(s) are not current on all postpetition payments consistent with § 1322(b)(5) of the Bankruptcy Code, including all fees, charges, expenses, escrow, and costs.

Creditor asserts that the total amount remaining unpaid as of \_\_\_\_\_ is:

- a. Total postpetition ongoing payments due: (a) \$ \_\_\_\_\_
- b. Total fees, charges, expenses, escrow, and costs outstanding: + (b) \$ \_\_\_\_\_
- c. **Total.** Add lines a and b. (c) \$ \_\_\_\_\_

Creditor asserts that the debtor(s) are contractually obligated for the postpetition payment(s) that first became due on: \_\_\_\_\_

MM / DD / YYYY

Debtor 1 Bryan D Pound Case number (if known) 16-28986 KRA  
First Name Middle Name Last Name

**Part 4:** Itemized Payment History

If the creditor disagrees in Part 2 that the prepetition arrearage has been paid in full or states in Part 3 that the debtor(s) are not current with all postpetition payments, including all fees, charges, expenses, escrow, and costs, the creditor must attach an itemized payment history disclosing the following amounts from the date of the bankruptcy filing through the date of this response:

- all payments received;
- all fees, costs, escrow, and expenses assessed to the mortgage; and
- all amounts the creditor contends remain unpaid.

**Part 5:** Sign Here

**The person completing this response must sign it. The response must be filed as a supplement to the creditor's proof of claim.**

Check the appropriate box::

- ☐ I am the creditor.
- ☒ I am the creditor's authorized agent.

**I declare under penalty of perjury that the information provided in this response is true and correct to the best of my knowledge, information, and reasonable belief.**

Sign and print your name and your title, if any, and state your address and telephone number if different from the notice address listed on the proof of claim to which this response applies.

**X** /s/ Armand J. Howell  
Signature

Date 01/24/2020

Print Armand J. Howell Title Attorney at Law  
First Name Middle Name Last Name

Company Halliday, Watkins & Mann, P.C.

**If different from the notice address listed on the proof of claim to which this response applies:**

Address 376 East 400 South, Suite 300  
Number Street

Salt Lake City, UT 84111  
City State ZIP Code

Contact phone (801) 355 - 2886

Email: [info@hwmlawfirm.com](mailto:info@hwmlawfirm.com)

**MAILING CERTIFICATE**

The undersigned hereby certifies that a true and correct copy of this Amended Response to Final Cure Payment was mailed by first class mail, postage prepaid, or via ECF, this 24th day of January, 2020, to each of the following:

Bryan D Pound and Katie Scarlet  
Snell  
2227 East Lennox Lane  
Saratoga Springs, UT 84043  
Debtors

United States Trustee  
Via ECF

Andrew T Curtis  
Via ECF  
Debtors' Attorney

Lon Jenkins  
Via ECF  
Chapter 13 Trustee

/s/ Armand J. Howell  
Armand J. Howell

**Exhibit D**

## Exhibit D

Worked	Logged	Spent	Task	Summary	Role	Rate	Billed
2/19/2020	Andrew T. Curtis	0.1	Drf Order	Fixed order and e-filed	Sr. Attorney	\$285.00	\$0.00
2/11/2020	Andrew T. Curtis	0.2	SMS Commun	SMS to/from clients re status, hearing outcome	Sr. Attorney	\$285.00	\$0.00
2/11/2020	Crisitian Manzo	0.1	Process Inbound Email from Client	Uploaded documents to case	Paralegal	\$125.00	\$0.00
2/10/2020	Lou G. Harris	0.3	Hearing on Mtn. to Determine	Attended hearing; requested fees	Sr. Attorney	\$285.00	\$85.50
2/6/2020	Andrew T. Curtis	0.1	Drf Order	No response; sent another email to Armand Howell	Sr. Attorney	\$285.00	\$28.50
2/3/2020	Andrew T. Curtis	0.6	Drf Order	Drafted order and sent email to Armand Howell	Sr. Attorney	\$285.00	\$171.00
2/3/2020	Andrew T. Curtis	0.1	Email to Armand Howell	Emailed Armand Howell proof of Jan 2020 and Feb 2020 mortgage payments	Sr. Attorney	\$285.00	\$28.50
1/31/2020	Andrew T. Curtis	0.1	Process SMS from Client	Obtained Jan 2020 and Feb 2020 mortgage payments/proof; reviewed and saved to case	Sr. Attorney	\$285.00	\$28.50
1/27/2020	Andrew T. Curtis	0.1	Hearing on Mtn. to Determine	Attended hearing; spoke with Mr. Armand Howell; hearing continued to allow Mr. Howell a thorough review of docs provided. Sent SMS to Bryan Pound re proof of Jan and Feb 2020 payments	Sr. Attorney	\$285.00	\$28.50
1/27/2020	Andrew T. Curtis	0.2	Hearing on Mtn. to Determine	Prepared for hearing	Sr. Attorney	\$285.00	\$57.00
1/27/2020	Andrew T. Curtis	0.1	Call to Client re Hearing	Discussed hearing with Client; no need to attend (evidence appears to have been accepted by mortgage); discussed potential outcomes	Sr. Attorney	\$285.00	\$28.50

1/24/2020	James J Haller	0.4	Draft Contested Order	Discussion with ATC re motion to deem mortgage current, provided him with caselaw and proposed argument for hearing on Monday.	Sr. Attorney	\$285.00	\$0.00
1/24/2020	Maria Raviela	0.2	Draft Contested Order	Spoke with client re attending hearing with Atty. Sent him SMS with time and location. Created task to remind him on Monday.	Paralegal	\$125.00	\$25.00
1/17/2020	Andrew T Curtis	0.1	Process SMS Response	Inbound SMS from client re: documents; uploaded and notified paralegal	Attorney	\$285.00	\$0.00
1/17/2020	Andrew T Curtis	0.1	Draft Contested Order	Reviewed and saved email from Mr. Howell confirming receipt of cancelled checks	Attorney	\$285.00	\$28.50
1/17/2020	Andrew T Curtis	0.1	Process SMS Response	Inbound SMS from client re: documents; uploaded and notified paralegal	Attorney	\$285.00	\$0.00
1/17/2020	Andrew T Curtis	0.1	Process SMS Response	Inbound SMS from client re: documents; uploaded and notified paralegal	Attorney	\$285.00	\$0.00
1/17/2020	Andrew T Curtis	0.1	Process Objections	Reviewed email from Client re cancelled checks requested by Mr. Howell; reviewed and saved documents; email to Mr. Howell with documents	Attorney	\$285.00	\$28.50
1/17/2020	Andrew T Curtis	0.1	Draft Contested Order	Received SMS and email from Client with Dec 2018 payment cancelled check; reviewed; saved to file; emailed Armand Howell	Attorney	\$285.00	\$28.50
1/14/2020	Andrew T Curtis	0.2	Deadline for Bryan and Katie Pound	Call to Client re cancelled checks for Wells Fargo; discussed Armand Howell's request	Attorney	\$285.00	\$57.00
1/10/2020	Andrew T Curtis	0.1	Pending Response	Email received from opposing counsel; reviewed; replied; emailed Client re Opposing Counsel's request for cancelled checks to prove payments	Attorney	\$285.00	\$28.50
12/26/2019	Andrew T Curtis	2.1	Legal Issue: Mrtg Delinquency Obj. to Notice	Reviewed bank stmts provided by Client; drafted mtn and NOH; e-filed and mailed; calendar updated; emailed Client status	Attorney	\$285.00	\$598.50



12/20/2019	Kevin Castelo	0.3	Inbound Call - re Mrtg Payments	Call from concerned Client re status of mortgage payments; reviewed notes and provided response to Client	Paralegal	\$125.00	\$37.50
12/16/2019	Maria Raviela	1.1	Legal Issue: Mrtg Delinquency Obj. to Notice	Reviewed history of mrtg pmts 2016 - 2019. Emailed mrtg co's atty.	Paralegal	\$125.00	\$137.50
12/16/2019	Madison Hansen	0.1	Walk in re: Document	Walk in re: documents; Wells Fargo transactio history provided; uploaded and notified paralegal	Paralegal	\$125.00	\$12.50
12/14/2019	Maria Raviela	0.1	Legal Issue: Mrtg Delinquency Obj. to Notice	Reviewed documents provided by Client; emailed proof of pmts to Mrtg Co's atty.	Paralegal	\$125.00	\$12.50
12/12/2019	Victor Preza	0.1	Process Inbound Email	Processed email from client re: disagreement with \$8k+ mortgage payment delinquency; documents provided; uploaded and notified paralegal	Paralegal	\$125.00	\$12.50

Total : \$1,463.00